

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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NATIONAL INSTITUTE FOR STRATEGIC  
TECHNOLOGY ACQUISITION (NISTAC),

Plaintiff

v.

NISSAN NORTH AMERICA, INC. et al.,

Defendants.

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AND RELATED COUNTERCLAIMS

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)  
) Case No. 11-cv-11039-GCS-LJM

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) **Hon. George C. Steeh**  
) **Magistrate Judge Laurie Michelson**  
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**AGREED ORDER REGARDING THE DECLARATION OF RICHARD P. BARON**

Before the Court is the DECLARATION OF RICHARD P. BARON (“The Baron Declaration”), submitted by Plaintiff in support of its Response Brief on Claim Construction (D.I. 79-1); DEFENDANTS’ MOTION TO STRIKE THE BARON DECLARATION (D.I. 81); and DEFENDANTS’ UNOPPOSED MOTION FOR EXPEDITED BRIEFING SCHEDULE RE MOTION TO STRIKE (D.I. 82).

After careful consideration of the parties’ submissions and arguments by counsel, and all other related matters presented to the Court, IT IS HEREBY ORDERED THAT:

(1) D.I. 81 and D.I. 82 are held in abeyance. The Baron Declaration will not be stricken at this time and will be included as part of the record of the Claim Construction Hearing;

(2) The Court will not at this time, however, consider expert extrinsic evidence, including the Baron Declaration, in construing the claim terms of the patents-in-suit that are in dispute. If, after consideration of the parties’ respective Initial and Response (and Defendants’ Supplemental) Claim Construction Briefs and the parties’ arguments at the Claim Construction

Hearing, the Court determines that reliance on expert extrinsic evidence is necessary in order to construe the disputed claim terms, the Court will request the parties to meet and confer and propose a procedure for addressing expert extrinsic evidence, including the Baron Declaration and a proposed discovery plan;

(3) Plaintiff shall not call Richard P. Baron as a live witness at the Claim Construction Hearing set for December 12, 2011; and

(4) By agreement of the parties, Defendants are granted leave to file a supplemental claim construction brief to address issues first raised by Plaintiff in its Response Brief on Claim Construction (D.I. 79).

IT IS SO ORDERED.

s/George Caram Steeh  
United States District Judge

Dated: December 6, 2011